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In re the application of: Galbraith et al.

Serial No.: 09/171,553

Filing Date: February 8, 1999

For: *Porcine Retrovirus*

Group Art Unit: 1632

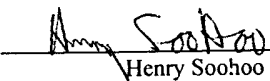
Examiner: R. Shukla

Attorney Docket No.: CFV-5.01

**Certificate of First Class Mail**

I hereby certify that this correspondence is being deposited with the U.S. Postal Service as First Class Mail in an envelope addressed to: Assistant Commissioner for Patents, Washington, D.C. 20231, on the date set forth below.

December 12, 2001  
Date of Signature and Deposit

  
Henry Soohoo

Commissioner for Patents  
Washington, D.C. 20231

Dear Sir:

**RESPONSE TO RESTRICTION REQUIREMENT/SPECIES ELECTION**

In response to the Restriction Requirement/Species Election dated September 13, 2001, Applicants provisionally elect with traverse the invention set forth in Group I, claims 43-64, drawn to GAG, ENV and POL polypeptides of PoEV. Applicants have further elected with traverse SEQ ID NO: 13 as the species.

In the restriction requirement under 35 U.S.C. § 121, the Examiner alleges that there are two distinct inventions as follows:

- “(I) Claims 43-64 drawn to polynucleotides that encode GAG, ENV and POL polypeptides of PoEV, vector comprising polynucleotides, detection kit, oligonucleotide primers, and method of detecting the presence of a polynucleotide in a nucleic acid sample, classified in class 435, subclass 6.
- (II) Claim 65, drawn to an antisense oligonucleotide that suppresses expression of a PoEV GAG, POL, or ENV polypeptide, classified in class 514, subclass 44.”

In addition, the Restriction Requirement states that claims 57 and 63 are generic to a plurality of disclosed patentably distinct species comprising SEQ ID NO 7, 8, 11, 12, 13, and 14.

The Action requires Applicants to elect a single species according to 35 U.S.C. §121. Applicants have elected SEQ ID NO: 13 with traverse. SEQ ID NOs: 13 and 14 are primers which amplify the ENV region of the PoEV as discussed at page 32 of the specification. Since these primers are used to amplify a single region, search of both SEQ ID NOs: 13 and 14 should be coextensive and thus should not constitute a burdensome search.

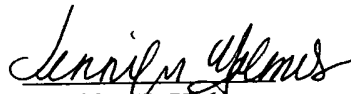
Applicants note that the election of species is for search purposes only and that, should the generic claim be deemed patentable, Applicants are entitled to a search and examination of a reasonable number of species. Should there be any questions after review of this paper, the Examiner is invited to contact the undersigned at (617) 832-1770.

In addition to this response, Applicants submit a request for a two month extension of time and the appropriate fee.

If there are any other fees due in connection with the filing of this Restriction Requirement, please charge the fees to our **Deposit Account No. 06-1448**.

Respectfully submitted,  
FOLEY, HOAG, & ELIOT

December 12, 2001  
Patent Group  
Foley, Hoag & Eliot LLP  
One Post Office Square  
Boston, MA 02109-2170  
Tel: (617) 832-1000  
FAX: (617) 832-7000  
Customer Number 25181

  
Jennifer K. Holmes  
Reg. No. 46,778  
Agent for Applicants